

REMARKS

Applicants submit this Amendment in reply to the Office Action mailed January 9, 2007.

As an initial matter, Applicants gratefully acknowledge the Examiner's indication of the allowance of claim 97 and the allowability of the subject matter of claims 105, 106, and 115. Accordingly, Applicants have rewritten each of claims 105, 106, and 115 into independent form at this time to include the subject matter of base claim 80. Applicants have also added claims 116-127 to depend from one of claims 97, 105, 106, and 115. Accordingly, claims 97, 105, 106, and 115-127 are now in *prima facie* condition for allowance.

By this Amendment, Applicants additionally amend claims 80, 82, and 112, and added new claims 128-131. The originally-filed specification, drawings, and claims fully support the subject matter of amended claims 80, 82, and 112, and new claims 128-131. No new matter has been introduced.

Before entry of this Amendment, claims 80 and 82-115 were pending in this application. After entry of this Amendment, claims 80 and 82-131 are pending in this application. Claims 80, 97, 105, 106, 115, and 128 are the sole independent claims.

On page 3 of the Office Action, claims 82, 111, and 112 were rejected under 35 U.S.C. § 112, second paragraph for alleged indefiniteness. Applicants have amended claims 82 and 112 as suggested by the Examiner. With regards to claim 111, however, M.P.E.P. 2173.05(b)(A) states that the term "about" is definite. Accordingly, Applicant asserts that claim 111, as currently written, is definite. For at least these reasons, Applicants respectfully request withdrawal of Section 112, second paragraph rejections.

On pages 3-5 of the Office Action, claims 80, 82, 84-96, 99, 104, 108-110, and 112-114 were rejected under 35 U.S.C. § 102(b) as being unpatentable over U.S.

Patent No. 5,788,223 to Platt ("Platt"). Applicants respectfully traverse this rejection.

Platt does not disclose or suggest the claimed invention. For example, independent claim 80 recites a rail assembly including, among other aspects, "wherein a horizontal width of the rail is greater than a horizontal width of the bracket or a vertical height of the rail is greater than a vertical height of the bracket when the bracket and rail are mounted on the post." Platt does not disclose at least this aspect of the invention either alone or in combination with the other aspects of the invention.

As can be seen in Fig. 1 of Platt, rail 2 is fully disposed within locking bracket 6 of fence rail clip 1. Assuming *arguendo* that rail 2 and locking bracket 6 respectively correspond to the rail and the bracket of claim 80, locking bracket 6 does not have a horizontal width or a vertical height greater than rail 2 when locking bracket 6 and rail 2 are mounted on fence post 3.

Accordingly, for at least these reasons, Applicants respectfully request withdrawal of the Section 102(b) rejection based on Platt.

On pages 5-6 of the Office Action, claims 98, 100-103, 107, and 111 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Platt. At least because the aforementioned deficiencies of claim 80, from which these claims depend, are not remedied by the assertions set forth in this rejection, Applicants respectfully request withdrawal of the Section 103(a) rejection based on Platt.

On page 6 of the Office Action, claim 83 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Platt in view of U.S. Patent No. 6,698,726 to Platt ("Platt).

'726"). At least because the aforementioned deficiencies of claim 80, from which this claim depend, is not remedied by the assertions set forth in this rejection, Applicants respectfully request withdrawal of the Section 103(a) rejection based on Platt in view of Platt '726.

New independent claim 128 recites a rail assembly including, among other aspects, "a bracket for mounting the rail to the post" including "at least one mounting hole configured to accommodate a screw or nail therethrough for attachment to the rail." Neither Platt nor Platt '726 are cited as disclosing such a structure. Accordingly, Applicants respectfully request allowance of independent claim 128 and dependent claims 129-131.

Applicants further submit that each of claims 82-96, 98-104, 107-114, 116-127, and 129-131 depends directly or indirectly from one of independent claims 80, 97, 105, 106, 115, and 128, and each is therefore allowable for at least the same reasons that respective independent claims 80, 97, 105, 106, 115, and 128 is allowable. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the references and therefore each is also separately patentable.

In view of the foregoing remarks, Applicants submit that this claimed invention, as amended, is neither anticipated nor rendered obvious in view of the prior art references cited against this application. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The Office Action contains characterizations of the claims with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.


In discussing the claims in this Amendment, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

If there is any fee due in connection with the filing of this Amendment, please charge the fee to our Deposit Account No. 06-0916.

Respectfully submitted,

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